UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

BATTELLE ENERGY ALLIANCE, LLC (BEA),

Employer/Petitioner,

and

INTERNATIONAL UNION, SECURITY, POLICE, AND FIRE PROFESSIONALS OF AMERICA, AND SECURITY, POLICE AND FIRE PROFESSIONALS OF AMERICA, LOCAL 3 (SPFPA),

Union,

and

SECURITY OPERATIONS SPECIALIST ASSOCIATION,

Intervenor

DECISION AND ORDER

On February 15, 2006[1] Battelle Energy Alliance, LLC (BEA) (Employer) filed a Petition under Section 9(c) of the National Labor Relations Act (the Act). On February 17, the International Union, Security, Police, and Fire Professionals of America (International), and Security, Police and Fire Professional of America, Local 3 (collectively with the International called the Union), filed a Motion to Dismiss the Petition (Motion). In its Motion, the Union asserted that this petition should be dismissed because the Employer and the Union are presently parties to a collective bargaining agreement (Contract) effective from May 24, 2005 through October 31, 2010. On February 21 the Security Operations Specialist Association (Intervenor) filed a response to the filing of this RM petition asserting essentially that the Union was defunct at the Employer's facility, that it had no members and no Executive Board there to administer the current contract and that a schism had occurred within the Union. On February 24, the Acting Regional Director issued an Order to Show Cause and Order Postponing

Hearing, directing that any party show cause as to why this petition should not be administratively dismissed pursuant to the Board's contract bar doctrine. On February 27 the Intervenor filed a Response to the Union's Motion and to the Order to Show Cause (collectively with its February 21 submission called Response).

There are three major issues presented in this case. The first issue, raised by the Intervenor, is whether the Union has suffered a schism that has raised a question concerning representation in this case. The second issue, also raised by the Intervenor, is whether the Security, Police and Fire Professionals of America, Local 3 (Local) is defunct, again raising a question concerning representation. The third issue is whether, if there is no schism here and if the Union is not defunct, the Contract constitutes a bar to an election in this case.

For the reasons enunciated below, I find that the Union has not suffered a schism, that it is not defunct and that the Contract precludes further processing of this petition under the Board's well established contract bar doctrine.

A. Statement of the Case

On March 21, 1985, in Case 19-RC-11143 the International was certified to represent all security guard personnel employed by the Employer at the Department of Energy Idaho National Engineering Laboratory facilities at various locations in the State of Idaho, excluding all office clerical employees, professional employees, security guard sergeants, pilots, aircraft mechanics, and supervisors as defined in the Act. Pursuant to this certification, on or about June 15, 2005 the Employer and the Union executed the Contract, their most recent collective bargaining agreement, which is effective from May 24, 2005 through October 31, 2010. The Contract covers approximately 190 employees

[1] All dates are in 2006 unless otherwise noted.

working at the Employer's seven worksites found at numerous facilities contained within the Department of Energy's Idaho National Laboratory (INEEL) located on approximately 900 square miles in and around Idaho Falls, Idaho.

According to the record, in about late November 2005, the Employer received notices signed by all but one member of the bargaining unit that stated:

> I_____ am with drawing (sic) my authorization for dues withholdings to Security Police and Fire Professionals of America. I no longer wish to be represented by this organization. I do give Battelle Energy Alliance authorization to withhold moneys in the amount of one and one half of my hourly wage to be paid per month to Security Operations Specialist Association. This letter will also serve as notice that I give Security Operations Specialist Association authorization to represent me in matters concerning wages, rates of pay, hours of work, and other conditions of employment. I make this notice under my legal rights pursuant to Idaho Statute Title 44 Chapter 20, numbers 44-2003 and 44-2004".

On or about November 29, 2005, the Intervenor sent the Employer a document titled "Notice to Battelle Energy Alliance" (Notice). That Notice, signed by "Kevin S. Hulse, President Security Operations Specialist Association" referred to "Affiliation SPFPA Local # 3 to Security Operations Specialist Association" and stated:

> By an overwhelming majority vote of its members, SPFPA Local #3 has voted to become an independent union. The Local's new name and affiliation will be Security Operations Specialist Association. All local representatives will remain the same, and there will be no change in our day to day relationship. The continuity of our Association has been completely preserved, and we will honor fully all contractual commitments with Battelle Energy Alliance. Please change your records to reflect the new name and affiliation, and contact the undersigned if you have any question.

On December 20, 2005 the Secretary Treasurer of the International sent a letter to the Employer by facsimile and mail stating that conditions existed in the Local which "seriously impairs its ability to perform its functions regarding the property and assets of the Local". The letter requested that all dues monies collected from bargaining unit employees covered by the Contract be made payable to the International and forwarded

to an address in Roseville, Michigan along with a copy of the “check-off report”. The letter further advised that the dues monies should continue to be sent to that Roseville Michigan address until the Employer received a letter rescinding that instruction from the International Secretary Treasurer.

By letter dated January 4, Terry J. Fowler, Vice President for the International’s Region 11 (including Idaho) confirmed that he had been appointed as the Administrator of the Local, that he would be the contact person for matters involving the Union and that no other person possessed the authority to bind the Union or adjust grievances. The letter requested the Employer to provide copies of all “union withdrawal letters, current seniority list with address and phone numbers” and advised that it was the intent of the International to restore “new leadership” for the Local as soon as possible and provide the Employer with “local contacts” when that was completed. The letter concluded by advising the Employer to contact Mr. Fowler as questions arose. On January 13 the Employer provided the requested information to Mr. Fowler.

By letter dated January 12 from the Employer’s Labor Relations Manager to the International’s Secretary Treasurer, with a subject line of “SPFPA Dues” the Employer confirmed that all of the former members of the Local had given the Employer “a signed letter disaffiliating themselves from the Union” and requesting the Employer to cease deducting dues from their paychecks. The letter further advised that the Employer would no longer deduct dues for members of the bargaining unit and would not have any funds to transfer to the International. Finally, the letter requested that the International advise the Employer about its intentions regarding the Local.

By e-mail dated January 25, 2006 from Kevin S. Hulse to the Employer, the Intervenor requested that the Employer withdraw their recognition of the Union “since

there is no longer majority support or members, as evident by the notices sent by the security force" to the Employer.

As noted above, the Employer filed this RM petition on February 15. In support of this petition, the Employer cites the Intervenor's November 29, 2005 demand for recognition and the fact that the bargaining unit is presently covered by the Contract between the Employer and Union, effective until October 31, 2010. The Union, in its Motion, argues that the Contract precludes the present petition under the Board's well established contract bar doctrine. The Intervenor, in its Response makes several arguments in support of its position that the Board's contract bar doctrine should not apply in this case. The Intervenor asserts that there have been a number of disagreements and issues between the Local and the International during the period April 2002 to November 2005 including: bargaining unit members' dissatisfaction in 2002 with the International's asserted lack of assistance on a Local grievance; the International's asserted failure to follow through with promised representation in two member's individual cases; April 2005 complaints from the Local's Executive Board to International Vice President Terry Fowler concerning a perceived lack of International assistance relating to the negotiations that led to the Contract; International Vice President Fowler's asserted lack of effective representation of the Local at the May 2005 International Convention; and an August 2005 Union Resolution that conditionally supported a Department of Energy initiative for an "Elite Force," that was strongly opposed by the leadership of the Local. According to the Intervenor, the dissatisfaction of the members of the Local over these issues resulted in their mass resignation from the Union as described earlier. The Intervenor contends that these disagreements within the Union created a schism and that the mass resignations from the Union made the Union defunct.

B. Findings and Conclusions

1. Schism and Defunctness

In its Response the Intervenor asserts that the Union has undergone a schism and that it is defunct and that each of these circumstances makes application of the contract bar doctrine inappropriate in this case. As a matter of law however, both contentions lack merit.

a. Schism

Turning first to the issue of whether a schism exists in this case, in *Hershey Chocolate Corp.,*121 NLRB 901, 906-08 (1958) the Board held that it had no statutory authority to conduct an election on the basis of a schism when the contractual representative is not defunct. In that decision the Board decided that its contract bar policies are required neither by the Act nor by judicial decision, but are rather discretionary rules which may be applied or waived as the facts in a given case may require in the interests of effectuating the policies of the Act. In *Syscon International, Inc.*, 322 NLRB 539,543 (1996) citing *Yates Industries,* 264 NLRB 1237, 1247, 1249 (1982) and *Hershey Chocolate*, the Administrative Law Judge, as adopted by the Board defined schism as:

> A basic intraunion conflict over policy at the highest level of an international union or within a federation which results in a disruption of existing intraunion relationships; and the employees seek to change their representative for reasons related to such conflict resulting in such confusion in the bargaining relationship that stability can only be restored by an election.

Applying the Board's criteria of schism in this case, the record does not establish that there was any conflict over policy at the highest level of the International that resulted in disruption of existing intraunion relationships. A distinction exists between schism and mere dissatisfaction among bargaining unit employees with their representation. *Allied Chemical Corp.*, 196 NLRB 483,484(1972). *Hershey Chocolate*,

supra; *Georgia Kaolin Co.*, 287 NLRB 485, 487-88 (1987); *Clayton & Lambert Mfg. Co.,* 128 NLRB 209, 210-11 (1960). A mere disaffiliation movement within a local, born out of a policy conflict between the local and its international, as in this case, does not satisfy the Board's requirements for a schism. *Swift & Co.,* 145 NLRB 756,763 (1963).

In its Response, the Intervenor points to a number of instances which it asserts support its position that the International has failed to represent members of the bargaining unit adequately in relation to grievances, negotiations, meetings, and in connection with matters related to the International's May 2005 Convention. The record also reflects disaffection with the Union on the part of the bargaining unit employees evidenced by their mass resignations from the Union, their affiliation with the Intervenor and its demand that the Employer recognize the Intervenor as the collective bargaining representative of these bargaining unit employees.

Although these facts indicate employee disaffection with the Union, they do not establish a basic intraunion conflict over fundamental policies at the highest levels of the Union that caused a disruption of existing intraunion relationships within the meaning of *Hershey Chocolate, supra.* Given the absence of evidence establishing the required fundamental conflict in this case, I find that there is no schism. *See Georgia Kaolin,* supra, at 488.

b. Defunctness

The Intervenor also asserts that at all material times the Union was defunct, relying upon the mass resignations of Union members including the Local's Executive Board and the formation of the Intervenor as support for its position. It is well established that a contract will not bar an election if the contracting representative is defunct. However, as the Board stated in *Hershey Chocolate*, a mere temporary inability to function is not the equivalent of defunctness; nor is the loss of all members in the unit the equivalent of defunctness if the representative otherwise continues in existence and

is willing and able to represent the employees. A bargaining representative is considered defunct and its contract is not a bar only if it is unable or unwilling to represent the employees. *Yates Industries,* supra, at 1249.

The evidence in this case does not establish that the Union was defunct at any point. There is no evidence that the Union has ever disclaimed or disavowed its willingness to represent these employees. Although the International's December 20, 2005 letter to the Employer noted that the Local's ability to perform its functions was seriously impaired, the letter also established that the International was willing and able to continue to function as the employees' 9(a) representative. Thus it requested that all dues be transmitted to the International. To similar effect, the Union's January 4 letter notified the Employer that an Administrator had been appointed for the Local, that the Administrator would be the contact person "for all Union matters", and that it was the intent of the International "to restore new leadership for [the Local] as soon as possible." The Administrator also requested copies of employees' withdrawal letters and the current seniority list. Thus contrary to the Intervenor's assertions, the record evidence establishes that the Union, including the Local operating under an Administrator, continues in existence and it has confirmed its willingness and ability to continue to represent employees consistent with the existing Contract. In summary, the facts of this case, when considered in the context of the Board's decision in *Hershey Chocolate*, fail to establish that the Union is defunct.

2. Contract Bar

Since I have found that no schism occurred in this case sufficient to create a question concerning representation and I have further found that the Union is not defunct, the final issue to resolve is whether the Contract operates as a bar to an election in this case. The Union asserts that the Contract in this case bars an election

and requests that this petition be dismissed. The Intervenor asserts that the Contract does not satisfy the requirements of the Board's contract bar doctrine and therefore does not bar further processing of this petition. The Employer has not taken a position on this issue.

As noted above, the International has been the certified collective bargaining representative of the employees who are the subject of this RM petition since 1985 and the term of the Contract presently in effect is May 24, 2005 through October 31, 2010. Generally speaking, the Board will not entertain a representation petition during the term of a collective bargaining agreement covering the employees subject to the petition. In the event the term of the contract exceeds three years, the contract will bar a petition for only the first three years of its term. The purpose of the Board's contract bar doctrine has been to provide stability in labor relations and to permit the benefits of collective bargaining, as finalized in collective bargaining agreements, to come to fruition throughout a full contract term. Therefore, an election petition, filed under Section 9 of the Act will not be processed during the term of a collective bargaining agreement, except during a specified window period near to the end of the three year term. Petitions filed at other times will be dismissed. *Deluxe Metal Furniture Co*., 121 NLRB 995 (1958); *Leonard Wholesale Meats,* 136 NLRB 1000 (1962).

In order to constitute a bar to an election, a contract must meet certain requirements. Specifically, it must be in writing, it must contain substantial terms and conditions of employment, it must encompass the employees described in the petition as constituting an appropriate unit and it must be signed by the parties. *Appalachian Shale Products Co.,* 121 NLRB 1160, 1161-64 (1958). The Contract in this case meets the requirements necessary to establish a contract bar.

There appears to be no dispute among the parties that the Contract is in writing, contains substantial terms and conditions of employment, encompasses the employees named in the RM petition and is presently in effect during a term starting in 2005 and ending in 2010. However, the Intervenor asserts that the contract cannot act as a bar in this case because the International, a necessary party, did not sign the Contract. In support of its position, the Intervenor relies upon the signature page of the Contract, which does not include a separate signature line for the International. [2]

The parties to the Contract, as set forth on its cover page, in its Introduction and in Article I ("Recognition") are the Employer, the International and the Local. The Contract specifies that the term, "Union," in the contract refers collectively to both the International and Local and they are therefore joint representatives. Since they are joint representatives, a signature by a representative from either the International or the Local would satisfy the *Appalachian Shale* requirement that the contract be signed by the parties.[3] Since the record here supports the Union's contention that the Contract was executed by both representatives of the Employer and the Union and the other requirements necessary to find contract bar are not in dispute, I find the Contract bars the filing of the petition in this case. *See Appalachian Shale Products, supra,* 121 NLRB at 1161-64, and cases cited.

[2] The Contract contains signature lines and signatures for 7 Employer representatives and 7 Local representatives.

[3] Although the signature page of the Contract does not include an independent signature line for the International, the first signature on the line after the Local's name is that of T. J. Fowler who is a Vice President for the International's Region 11 and who acted, at the time that the Contract was executed, as the International's liaison with the Local. Appended to and part of the Contract are two Memoranda of Agreement, each providing a separate signature line for the International and each bearing Mr. Fowler's signature. Since the record as a whole reflects Mr. Fowler's status as an International Vice President, and the Contract itself designates the International as a signatory party, to focus on the lack of a pre-printed signature line dedicated to the International would elevate form over substance. Cf., e.g., *Holiday Inn*, 225 NLRB 1092 (1976); *Appalachian Shale Products*, supra, 121 NLRB at 1162 (fact that signatures to agreement are not on same formal document or are contained in several informal documents does not defeat application of contract bar).

It is hereby ORDERED that the Petition in this matter is dismissed. [4]

Dated at Denver, Colorado this 10th day of April, 2006.

/s/ B. Allan Benson
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[4]Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision and Order may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request for must be received by the Board in Washington on April 24, 2006.